



1 Scott Edward Cole, Esq. (S.B. #160744)
 2 Laura Grace Van Note, Esq. (S.B. #310160)
 3 **COLE & VAN NOTE**
 4 555 12th Street, Suite 2100
 5 Oakland, California 94607
 Telephone: (510) 891-9800
 Facsimile: (510) 891-7030
 Email: sec@colevannote.com
 Email: lvn@colevannote.com

VENTURA SUPERIOR COURT

FILED

07/18/2024

Brenda L. McCormick
Executive Officer and Clerk

Elizabeth Muller
Elizabeth Muller

6 Attorneys for Representative Plaintiff
and the Plaintiff Class

8 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **IN AND FOR THE COUNTY OF VENTURA**

11 VERONICA HUBBARD, individually,
12 and on behalf of all others similarly
situated,

13 Plaintiff,

14 v.

15 LIVINGSTON MEMORIAL VNA
16 HEALTH CORP., LIVINGSTON
17 MEMORIAL VISITING NURSE
18 ASSOCIATION, LIVINGSTON
19 CAREGIVERS, and DOES 1 through
20 100, inclusive,

20 Defendants.

Case No. 56-2023-00576342-CU-NP-VTA

CLASS ACTION

~~PROPOSED~~ ORDER AND JUDGMENT:

- (1) GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT;
- (2) AWARDING ATTORNEYS' FEES AND COSTS TO CLASS COUNSEL; AND
- (3) AWARDING ENHANCEMENT TO THE REPRESENTATIVE PLAINTIFF

Date: June 6, 2024
 Time: 8:20 a.m.
 Dept.: 40
 Judge: Hon. Mark S. Borrell

COLE & VAN NOTE
 ATTORNEYS AT LAW
 555 12TH STREET, SUITE 2100
 OAKLAND, CA 94607
 TEL: (510) 891-9800

22 This matter came before the Superior Court of the State of California, in and for the County
 23 of Ventura, Department 40, at 8:20 a.m. on June 20, 2024 with Cole & Van Note appearing as
 24 counsel for Representative Plaintiff Veronica Hubbard, individually, and on behalf of the
 25 Settlement Class, and O'Hagan Meyer appearing for Defendants Livingston Memorial VNA
 26 Health Corp., Livingston Memorial Visiting Nurse Association and Livingston Caregivers. The
 27 Court, having carefully considered the briefs, argument of counsel and all matters presented to the
 28

COLE & VAN NOTE
ATTORNEYS AT LAW
555 12TH STREET, SUITE 2100
OAKLAND, CA 94607
TEL: (510) 891-9800

1 Court and good cause appearing, hereby **GRANTS** Plaintiff’s Motion for Final Approval of Class
2 Action Settlement.

3

4

FINDINGS

5

6

Based on the oral and written argument and evidence presented in connection with the
motion, the Court makes the following findings:

7

8

1. All terms used herein shall have the same meaning as defined in the proposed
Settlement Agreement (“Agreement”).

9

10

2. This Court has jurisdiction over the subject matter of the above-captioned litigation
and over all Parties to this litigation, including the Settlement Class.

11

Preliminary Approval of the Settlement

12

13

14

3. On March 8, 2024, the Court granted preliminary approval of a class-wide
settlement. At this same time, the Court approved certification of a provisional Settlement Class
for settlement purposes only.

15

Notice to the Plaintiff Class

16

17

18

19

20

4. In compliance with the Preliminary Approval Order, the Class Notice was mailed
by first class mail to the Settlement Class Members at their last known addresses on or about March
19, 2024. Mailing the Class Notice to their last known addresses was the best notice practicable
under the circumstances and was reasonably calculated to communicate actual notice of the
litigation and the proposed settlement to the Settlement Class. 3,451 Notices were undeliverable.

21

22

23

24

25

26

27

28

5. According to the Claims Administrator, there are 711 members of the Settlement
Class who will receive a benefit from a Settlement Claim. The deadline for opting out or objecting
has passed and there are two Settlement Class Members who have done so. There was an adequate
interval between mailing of the Notice and the deadline to permit Settlement Class Members to
choose what to do and act on their decision.

COLE & VAN NOTE
ATTORNEYS AT LAW
555 12TH STREET, SUITE 2100
OAKLAND, CA 94607
TEL: (510) 891-9800

1 **Fairness of the Settlement**

2 6. The Agreement is entitled to a presumption of fairness. *Dunk v. Ford Motor Co.*,
3 48 Cal.App.4th 1794, 1801 (1996).

4 7. There has been no collusion between the parties in reaching the proposed
5 settlement.

6 8. Plaintiff's investigation and discovery have been sufficient to allow the Court and
7 counsel to act intelligently.

8 9. Counsel for both parties are experienced in similar data breach class action
9 litigation. All counsel recommended approval of the Agreement.

10 10. The consideration to be given to the Settlement Class Members under the terms of
11 the Agreement is fair, reasonable, and adequate considering the strengths and weaknesses of the
12 claims asserted in this action and is fair, reasonable, and adequate compensation for the release of
13 Settlement Class Members' claims, given the uncertainties and risks of the litigation and the delays
14 which would ensue from continued prosecution of the action.

15 11. The proposed Agreement is approved as fair, adequate, and reasonable and in the
16 best interests of Settlement Class Members.

17 **Attorneys' Fees/Expenses**

18 12. The Agreement provides for (and Class Counsel seeks) an award of up to \$250,000
19 to Class Counsel as attorneys' fees in this action, plus reasonable litigation costs and expenses, up
20 to a cap of \$20,000. This was negotiated separately from and will be paid separately and
21 independently from the monies paid to Settlement Class Members for their claims. As such, this
22 award will not affect the amount of money any Settlement Class Member will receive for their
23 claims.

24 13. The award of attorneys' fees and reimbursement of litigation expenses are
25 reasonable, in light of the contingent nature of Class Counsel's fee, the substantial amount of work
26 actually performed such that Class Counsel will not receive a windfall incommensurate with the
27 time and effort dedicated to the case, the risks assumed, the results achieved by Class Counsel, and
28

1 due to the significant amount of work Class Counsel anticipates post-final approval of the
2 settlement.

3 **Service Award**

4 14. The Agreement provides for a Service Award of up to \$5,000 for the Representative
5 Plaintiff Veronica Hubbard, subject to the Court’s approval. This money is to be separately from
6 the Settlement Fund out of which Settlement Class Members’ claims will be paid. The Court finds
7 this Service Award reasonable in light of the risks and burdens undertaken by Representative
8 Plaintiff in this action and for her time and effort in bringing and prosecuting this matter on behalf
9 of the Settlement Class.

10 **Cy Pres Award**

11 15. The Agreement provides for the total amount of uncashed settlement share checks
12 to be paid to a charitable organization as a *cy pres* recipient that is agreed upon by Livingston,
13 Class Counsel and The Court. The organization that Livingston and Class Counsel have agreed
14 upon to be the *cy pres* recipient is the Electronic Privacy Information Center (“EPIC”). EPIC is a
15 charitable organization that has a mission to secure the fundamental right to privacy in the digital
16 age for all people. The Court finds EPIC to be an appropriate charitable organization as a *cy pres*
17 recipient in this case.

18 **IT IS HEREBY ORDERED THAT:**

19 1. The Settlement Class is certified for the purposes of settlement only. The Settlement
20 Class is hereby defined as:

21 “All individuals within the State of California that received notice from Livingston
22 Memorial VNA Health Corporation, Livingston Memorial Visiting Nurse
23 Association and/or Livingston Caregivers of a Data Breach occurring between
24 February 6, 2022 and February 11, 2022.”

25 2. The Agreement is hereby finally approved as fair, reasonable, adequate, and in the
26 best interest of the Settlement Class.

27
28

1 3. Class Counsel are awarded attorneys' fees in the amount of \$250,000, and expenses
2 in the amount of \$19,585.19. Class Counsel shall not seek or obtain any other compensation or
3 reimbursement from Defendant, Plaintiff, or members of the Settlement Class.

4 4. Payment of a Service Award in the amount of \$5,000 to Plaintiff Veronica Hubbard.

5 5. A Final Judgment in this action is hereby entered and this shall constitute a
6 Judgment for purposes of California Rules of Court, Rule 3.769(h).

7 6. This Final Judgment shall bind each Settlement Class Member and shall operate as
8 a full release and discharge of the Released Claims against the Released Parties. All rights to appeal
9 the Final Judgment have been waived. This Final Judgment and Final Approval Order shall have
10 *res judicata* effect and bar all Settlement Class Members from bringing any action asserting
11 Settlement Class Members' Released Claims under the Agreement.

12 7. The Agreement and Settlement are not an admission by Defendant, nor is this Final
13 Approval Order a finding, of the validity of any claims in this action or of any wrongdoing by
14 Defendant. Neither this Final Approval Order, this Final Judgment, the Agreement, nor any
15 document referred to herein, nor any action taken to carry out the Agreement is, may be construed
16 as, or may be used as an admission by or against Defendant of any fault, wrongdoing or liability
17 whatsoever. The entering into or carrying out of the Agreement, and any negotiations or
18 proceedings related thereto, shall not in any event be construed as, or deemed to be evidence of,
19 an admission or concession with regard to the denials or defenses by Defendant and shall not be
20 offered in evidence in any action or proceeding against Defendant in any court, administrative
21 agency or other tribunal for any purpose whatsoever other than to enforce the provisions of this
22 Final Approval Order, this Final Judgment, the Agreement, or any related agreement or release.
23 Notwithstanding these restrictions, any of the Released Parties may file in this case or any other
24 proceeding this Final Approval Order, this Final Judgment, the Agreement, or any other papers
25 and records on file in the case as evidence of the Settlement to support a defense of *res judicata*,
26 collateral estoppel, release, or other theory of claim or issue preclusion or similar defense as to the
27 Released Claims. Nothing set forth in this Order shall be construed to modify the absolute
28

COLE & VAN NOTE
ATTORNEYS AT LAW
555 12TH STREET, SUITE 2100
OAKLAND, CA 94607
TEL: (510) 891-9800

1 obligation of the Representative Plaintiff to dismiss with prejudice, upon payment of the settlement
2 amount set forth in the Agreement, all of her claims set forth in this action.

3 8. Notice of entry of this Final Approval Order and Final Judgment shall be given to
4 Class Counsel on behalf of Plaintiff and all Settlement Class Members. It shall not be necessary to
5 send notice of entry of this Final Approval Order and Final Judgment to individual Settlement
6 Class Members, which shall be posted on the settlement website. The time for any appeal shall run
7 from service of notice of entry of the Final Approval Order and Final Judgment by Class Counsel
8 on Defendant.

9 9. After entry of this Order and Final Judgment, the Court shall retain jurisdiction to
10 construe, interpret, implement, and enforce the Agreement and this Judgment, to hear and resolve
11 any contested challenge to a claim for settlement benefits, and to supervise and adjudicate any
12 dispute arising from or in connection with the distribution of settlement benefits.

13 10. In the event the Settlement does not become final and effective in accordance with
14 the terms of the Settlement Agreement, or is terminated, cancelled, or otherwise fails to become
15 effective for any reason, then this Final Approval Order and Final Judgment, and all orders entered
16 in connection herewith shall be rendered null and void and shall be vacated.

17 11. A Compliance Hearing is hereby set for ~~FFBI 03 AKA KI A E E~~ a.m./p.m. in Department 40 of
18 this Court. At least ten (10) court days before the Compliance Hearing, Class Counsel shall submit
19 a Case Management Conference Statement, accompanied by a Declaration from the Claims
20 Administrator (including a summary accounting identifying the distributions made, the number
21 and value of any uncashed checks, the status of any unresolved issues, and any other matters
22 appropriate to evaluate the effectiveness and completeness of the distribution).

23
24 **IT IS SO ORDERED.**

25
26 Dated: 07/17/2024

27 By: 
28 Hon. Mark S. Borrell